



November 30, 2021

Via Electronic Comment Filing System (ECFS)

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

**Re: *Advanced Methods to Target and Eliminate Unlawful Robocalls*
CG Docket No. 17-59**

Dear Ms. Dortch:

TCN, Inc. (“TCN”)¹ respectfully submits this *ex parte* letter in response to USTelecom – The Broadband Association’s (“USTelecom’s”) Petition for Reconsideration and Request for Clarification (“Petition”) and Request for Emergency Stay or Waiver (“Request”).²

In the Petition, USTelecom asks the Federal Communications Commission (“Commission” or “FCC”) to reconsider the requirement that voice service providers terminating a call on an IP network immediately notify a caller of a blocked call using SIP Code 607 (which signifies “Unwanted” calls) or 608 (which signifies “Rejected” calls).³ Months later, USTelecom amended its Petition to request that the FCC mandate use of SIP Code 603 (which signifies “Declined” calls) instead.⁴ In the Request, USTelecom asks the Commission to stay or, in the

¹ Founded in 1999, TCN is a leading provider of cloud-based call center technology worldwide, serving a number of Fortune 500 companies and enterprises in multiple industries, including healthcare, education, automotive, politics, marketing, and collection. TCN combines a deep understanding of the needs of call center users with a highly affordable delivery model, ensuring immediate access to robust call center technology, including interactive voice response, call recording, and business analytics required to optimize operations and adhere to the Telephone Consumer Protection Act (“TCPA”).

² See USTelecom Petition for Reconsideration and Request for Clarification, CG Docket No. 17-59 (May 6, 2021) (“Petition”); USTelecom Request for Emergency Stay or Waiver in the Alternative, CG Docket No. 17-59 (Oct. 26, 2021) (“Request”).

³ See Petition at 2-3.

⁴ See Letter from Joshua M. Bercu, Vice President, Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59, at 2 (July 27, 2021) (“Should the Commission reconsider the [notification] requirement and mandate SIP Code 603 . . .”).

alternative, waive Section 64.1200(k)(9) of the Commission's rules.⁵ Section 64.1200(k)(9) requires all terminating voice service providers to return – and all intermediate service providers to transmit – SIP Code 607 or 608 on IP networks beginning January 1, 2022.⁶ According to USTelecom, voice service providers “will be forced” to stop blocking illegal traffic if they must notify callers of blocked calls by January 1, 2022, as required under the FCC's rules.⁷

In asking the Commission to stay the notification rules, USTelecom bears a high burden under FCC precedent. USTelecom must demonstrate that:

- (1) It is likely to prevail on the merits;
- (2) It will suffer irreparable harm absent the grant of preliminary relief;
- (3) Other parties will not be harmed if the stay is granted; and
- (4) The public interest would favor grant of the stay.⁸

USTelecom has not met all four of these factors, as the law requires. Specifically, USTelecom has clearly failed to show how “other parties will not be harmed if the stay is granted.”⁹

The Commission's call blocking notification and redress requirements exist for good reason. To help consumers receive the calls that they want and expect, the FCC's rules are intended to “allow[] callers to access redress more rapidly” and ensure callers may “contact the consumer with important information.”¹⁰ Ultimately, the requirements seek to achieve an important balance between giving voice service providers the flexibility to block illegal traffic while giving consumers and callers protection against arbitrary, erroneous, or overbroad call blocking algorithms that might impede lawful, wanted communications.

Based on TCN's recent experience operating without clear notification safeguards, the status quo is not working and increasingly becoming more difficult as voice service providers block more

⁵ See Request at 1; *see also* 47 C.F.R. § 64.1200(k)(9).

⁶ See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Fourth Report and Order, 35 FCC Rcd 15221, ¶ 93 (establishing effective date of January 1, 2022), App. A (2020) (providing language of new 47 CFR § 64.1200(k)(9)) (“*Fourth Report and Order*”).

⁷ Request at 2.

⁸ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Order Denying Stay Petition, 35 FCC Rcd 5807, ¶ 6 (WTB 2020).

⁹ Notwithstanding USTelecom's failure to satisfy the four legal criteria, USTelecom ignores the fact that the Commission gave voice service providers a year's notice about implementing the requirement. *Fourth Report and Order* ¶ 93. USTelecom has provided no credible reason why providers failed to implement the notification under the generous deadline. *See id.* ¶ 61 (“By delaying the compliance date of these requirements until January 1, 2022, which is approximately 12 months from the adoption of this Order, or six months from the STIR/SHAKEN implementation compliance date, we ensure that voice service providers can make the necessary software upgrades without diverting resources from STIR/SHAKEN implementation.”).

¹⁰ *Id.* ¶ 53.

traffic without proper notifications. Grant of the Petition or Request would punish consumers who have asked to receive safety alerts, fraud alerts, data security breach notifications, product safety recall notices, healthcare and prescription reminders, power outage updates, and other communications that may be blocked.¹¹ If the FCC grants the Request or Petition, consumers' receipt of these wanted messages will be delayed as calling parties expend additional, unnecessary time and resources determining whether the SIP code is accurate.

The Commission has recognized that, as the entity implementing carrier-level blocking, a voice service provider is best positioned to send an accurate SIP code.¹² Accordingly, the FCC should continue its chosen course and reject USTelecom's Petition and Request or, in the alternative, allow voice service providers six additional months to implement SIP Codes 607 and 608, as other stakeholders have reasonably proposed as a compromise.¹³

I. Voice service providers' increased use of SIP Code 486 (Busy Here) has placed an undue burden on other parties to determine whether calls are being blocked, demonstrating the limitations of SIP Codes other than SIP Code 607 or 608 and violating voice service providers' obligations under the TRACED Act.

The TRACED Act requires the FCC to "ensure . . . robocall blocking services . . . are provided with *transparency and effective redress for both (i) consumers; and (ii) callers.*"¹⁴ While USTelecom suggests that consumers and callers can easily assess the extent of blocking if they receive SIP Codes *other than* those required by the Commission, TCN's experience reveals that using other codes neither is transparent nor provides effective redress.

Specifically, TCN recently became aware that at least four of its clients (operating in the fields of healthcare, customer care, and finance) began receiving large volumes of SIP Code 486 ("Busy Here").¹⁵ As its title makes plain, SIP Code 486 serves purposes wholly unrelated to blocking,

¹¹ See American Bankers Association et al. Partial Opposition and Comments, CG Docket No. 17-59, at 3 (June 4, 2021) (listing the types of lawful calls that harm consumers when blocked).

¹² See *Fourth Report and Order* ¶ 56 ("To ensure that callers understand these notifications and can make informed decisions regarding next steps, we require voice service providers to use specific, existing codes when blocking calls.").

¹³ See Letter from Jonathan Thessin, Vice President/Senior Counsel, American Bankers Association, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59, at 2 (Nov. 2, 2021) ("Alternatively, the Commission could grant USTelecom's request in part by setting a new deadline while retaining the requirement to implement SIP Codes 607 and 608 within the new timeframe. This extension would provide voice service providers with a total of 18 months to implement the requirements in the Fourth Report and Order.").

¹⁴ Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274, § 10(b) (2019) (emphasis added) ("TRACED Act").

¹⁵ SIP Code 486 indicates that the recipient's "end system was contacted successfully, but the [recipient] is currently not willing or able to take additional calls at th[e] end system." Rosenberg et al., Internet Engineering Task Force, *SIP: Session Initiation Protocol*, RFC 3261, § 21.4.24 (June 2002).

which dramatically increases the difficulty of determining whether receipt of SIP Code 486 is justified. When confronted with a customer complaint, TCN must initiate an investigation that can last for several hours. If there appears to be an abnormally high receipt of SIP Code 486, TCN will run additional diagnostics by using a different authorized Caller ID, which allows TCN to determine whether the voice service providers likely are blocking calls. Otherwise, TCN is forced to contact the terminating voice service provider in an attempt to resolve the issue.

*To date, each blocking event has required TCN to invest 10-20 hours of investigation and outreach to voice service providers. In every case, the voice service provider has failed to resolve the false labeling or improper blocking, leaving TCN and its clients without the adequate redress required by the TRACED Act.*¹⁶

II. As TCN’s experience demonstrates, reliance on SIP Codes other than 607 and 608 fails to provide transparency or adequate redress and underscores the need for the Commission’s adopted requirements to take effect as originally planned.

In the *Fourth Report and Order*, the Commission settled on SIP Codes 607 and 608 to establish a notification system that was “uniform, clear, and distinct from other signals, such as a busy signal [*i.e.*, SIP Code 486], and ensure that callers can act on this information.”¹⁷ The Commission mandated use of SIP Codes 607 and 608 “[t]o ensure that callers understand these notifications and can make informed decisions regarding next steps.”¹⁸

Such clarity does not exist with SIP Code 486 and would not exist with SIP Code 603. The record has established that SIP Code 603, similar to SIP Code 486, “was specifically NOT designed for network level blocking as it presumes the call reached the called party.”¹⁹ Unlike SIP Codes 607 and 608, SIP Code 603 does not tell recipients who to contact.²⁰ Using SIP Code 603 as a “catch-all,” as USTelecom proposes, would “lead to confusion” and contravene the transparency and adequate redress provisions unambiguously required under the TRACED Act,

¹⁶ After investigating a customer complaint and determining that the customer’s calls were blocked, TCN reached out to a voice service provider, which directed TCN to an informational webpage. The webpage acknowledges voice service providers’ use of SIP Code 486 for blocking and recommends that callers or their agents submit whitelisting requests using the major providers’ websites.

¹⁷ *Fourth Report and Order* ¶ 58.

¹⁸ *Id.* ¶ 56.

¹⁹ Letter from Christopher L. Shipley, Attorney & Policy Advisor, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59, at 2 (Oct. 12, 2021).

²⁰ *See id.* at 3 (“In the absence of a field that tells who to contact (which unfortunately is the case with SIP Code 603), it is incumbent on the carrier receiving the code to do a look up and find out who is blocking the call to raise a redress request.”).

thereby “undermin[ing] the purpose” of the Commission’s requirements and why it chose SIP Codes 607 and 608.²¹

The notification requirement’s reliance on SIP Codes 607 and 608 properly – and reasonably – places the burden on the voice service provider doing the carrier-level blocking to accurately categorize its activity, allowing lawful callers to understand the network issue more quickly and cost-effectively. TCN’s recent difficulties obtaining clarity and redress from voice service providers sending SIP Code 486 – and the difficulties TCN would continue to experience receiving SIP Code 603 if the Petition or Request were granted – highlights the importance of the notification requirements adopted in the *Fourth Report and Order*.

III. Conclusion

Delaying and diluting the notification requirements, as USTelecom has requested, would contravene the TRACED Act, impair the Commission’s policy objectives expressed in the *Fourth Report and Order*, and undermine consumer expectations. The record shows that consumers and legitimate callers will experience harm if the Petition or Request is granted. Grant of the Petition or Request would further normalize parties’ recent failures to obtain adequate redress for erroneously blocked calls. Accordingly, USTelecom cannot satisfy the Commission’s criteria justifying a stay, and the Commission should reject USTelecom’s Petition and Request.

Sincerely,

/s/ Jesse Bird

Jesse Bird
Chief Technology Officer

Darrin Bird
Executive Vice President

²¹ *Id.* at 2.